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**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOSEPH POETT :
7417 Parkwood Drive :
St. Louis, MO 63116-2139 :
Plaintiff,

v. : **Case No. _____**

U.S. DEPARTMENT OF : **Case: 1:08-cv-00622**
JUSTICE : **Assigned To : Kollar-Kotelly, Colleen**
Serve: Attorney General of : **Assign. Date : 4/10/2008**
The United States : **Description: FOIA/Privacy Act**
950 Pennsylvania Avenue N.W. :
Washington, D.C. 20530-0001 :
Defendant. :

COMPLAINT

For his complaint, Plaintiff, Joseph Poett, alleges as follows:

NATURE OF THIS ACTION

1. This is a Freedom of Information Act ("FOIA") action that seeks declaratory and injunctive relief in light of the failure of the United States Department of Justice to release documents to Joseph Poett as required by law.

JURISDICTION

2. This Court possesses subject matter jurisdiction over this action pursuant to 28 U.S.C. Section 1331 and 5 U.S.C. Section 552(a)(4)(B).

VENUE

3. Venue is appropriate in this Court pursuant to 5 U.S.C. section 552 (a)(4)(B).

PARTIES

4. The Plaintiff, Joseph Poett, is a chemist employed by the United States

Department of Agriculture in St. Louis, Missouri.

5. The Defendant, the United States Department of Justice, is a governmental Agency empowered to administer the provisions of **FOIA** with offices in the District of Columbia.

FACTUAL BACKGROUND

6. Joseph Poett is a Chemist employed by the United States Department of Agriculture in the Food and Safety and Inspection Service located in St. Louis Missouri. Joseph Poett is married and has a family to support.

7. On September 11, 2006, Joseph Poett was placed on Administrative Leave on the grounds he had been denied access to Select Agents and Toxins based upon information provided by the U.S. Attorney General's Office that Joseph Poett was suspected of "knowing involvement with an organization that engages in intentional crimes of violence", See Exhibit 1(a) for a copy of that Notice attached hereto and made a part hereof. The Administrative Leave restriction was subsequently lifted, and Joseph Poett remains employed, but is not permitted access to Select Agents and Toxins when performing his duties as a Chemist.

8. The restriction of denying him access to Select Agents and Toxins and the accusation that Joseph Poett is knowingly involved with an organization that engages in intentional crimes of violence casts a pall over his current employment; is an impediment to career advancement, and jeopardizes his current and future employment.

9. Joseph Poett has never been knowingly involved with any organization that engages in intentional crimes of violence. In an effort to clear his name, Joseph Poett filed a **FOIA** request on June 21, 2007 seeking to ascertain the identity of the

organization he was allegedly involved with, the acts he allegedly took, and the dates and times of the alleged actions he took. See Exhibit "1" attached hereto and made a part hereof for the **FOIA** request submitted.

10. On August 1, 2007 the Federal Bureau of Investigation acknowledged receipt of the **FOIA** request. See Exhibit "2" for a copy of that letter attached hereto and made a part hereof.

11. On October 15, 2007 the Federal Bureau of Investigation responded to Joseph Poett's **FOIA** request. The F.B.I. did not provide any of the information Joseph Poett requested. Rather the F.B.I. submitted six pages of documents which consisted of (a) Explanation of Exemptions from Title 5 United States Code, Section 552; (b) Background information regarding the law that permits Bioterrorism Risk Assessment Matters; (c) Criteria for adjudging a Candidate a Risk; (d) Criteria used to make a determination a Candidate was a risk. See Exhibit "3" attached hereto and made a part hereof for a copy of the FBI's response to Joseph Poett's **FOIA** request.

12. On October 26, 2007 Joseph Poett filed an administrative Appeal regarding the denial of Joseph Poett's **FOIA** request. See Exhibit "4" attached hereto and made a part hereof for a copy of Joseph Poett's **FOIA** Appeal.

13. On December 31, 2007 the U.S. Department of Justice affirmed the Decision of the F.B.I. to deny Joseph Poett permission to review the records he requested on the ground the records were exempt from disclosure, See Exhibit "5" attached hereto and made a part hereof for a copy of the denial of the Appeal.

14. By way of background information Joseph Poett after having worked for a period of years as a Chemist at USDA was assigned a Supervisor who was difficult to

work with. There was an administrative proceeding, and a Hearing was scheduled. Because Joseph Poett disliked working with the Supervisor he entered into an Agreement wherein he agreed to voluntarily resign from his position and in exchange all job references given on his job performance were to be neutral.

15. After resigning, Joseph Poett applied for many Chemist positions, and even though qualified was not hired. He began to suspect the job references being given by the USDA to his prospective employers were not neutral. He obtained evidence that this was so and instituted administrative proceedings to have the Agreement set aside. When he was not successful in the Administrative proceedings, he appealed to the Federal Court.

16. Joseph Poett prevailed on the appeal. USDA was ordered to reinstate Joseph Poett in his Chemist position with the USDA and USDA was ordered to pay to Joseph Poett all monies he would have earned had his employment not been terminated.

17. After Joseph Poett resumed his job as a Chemist with USDA a supervisor there began to sabotage his work. To berate him, denigrate his job abilities, demand he perform chemical analysis in 24 hours when the USDA procedures required 48 hours to complete the analysis, inter alia.

18. After Joseph Poett sought the services of legal counsel in the matter, the Supervisor ceased engaging in the behavior set forth above.

19. It was not long after that Supervisor's behavior ceased that Joseph Poett received the September 11, 2006 Notice he was placed on Administrative Leave due to being suspected of having a knowing involvement with an organization that engages in intentional crimes of violence.

20. The Federal Bureau of Investigation in denying Joseph Poett's **FOIA** request to be apprised of what terrorist organization he allegedly interacted with, the dates and times of such alleged interaction, and the actions he allegedly undertook invoked four exemptions to disclosure pursuant to 5 U.S.C. 552a (b). These are:

(a) 5 U.S.C. 552a (b)(2) Claiming the information sought related solely to the internal personnel rules and practices of an Agency.

(b) 5 U.S.C. 552a (b)(6) Claiming the information sought related to personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(c) 5 U.S.C. 552a (b)(7)C Claiming the information sought related to records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could be reasonably expected to constitute an unwarranted invasion of personal privacy.

(d) 5 U.S.C. 552a (b)(1) Claiming the information sought was specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order.

21. The F.B.I. failed to demonstrate in its denial how the records requested by Joseph Poett fit any of the exemptions claimed. For example in the (a) exemption claimed supra, Plaintiff did not seek to learn about any personnel rules or practices. Nor does exemption (b) claimed supra, apply as Joseph Poett sought no personnel, medical files or similar files the disclosure of which would invade anyone's privacy. Likewise exemption (b)(7) C does not apply since Joseph Poett did not seek to review records

compiled for law enforcement purposes that might constitute an invasion of someone's privacy. Finally the F.B.I. Failed to demonstrate how providing Joseph Poett with information about his alleged knowing involvement with an organization that engages in intentional crimes of violence would violate an Executive Order to keep secret information necessary to national defense or foreign policy. Simply reciting an exemption as reason to deny an **FOIA** request without more does not demonstrate how the F.B.I. is entitled to withhold documents.

22. The United States Department of Justice did not demonstrate in affirming the Decision of the F.B.I that the U.S. Department of Justice was entitled to withhold the information requested by Joseph Poett. The U.S. Department of Justice reiterated the same exemptions claimed by the F.B.I. and added another exemption, U.S.C. Title 5-552a(j)(2), without demonstrating its entitlement to claim it. U.S.C. Title 5-552a (j)(2) is a general exemption that exempts records maintained by an Agency that contains information compiled for a criminal investigation including reports of agents or informants associated with an identifiable individual.

23. The government bears the burden of proof to justify invoking an exemption, See Halpern v. Federal Bureau of Investigation, 181 F.3d 279 (2nd Cir. 1999).

24. Exemptions do not apply when the requester is the subject of the report being sought as in this pending case, See, U.S. Department of Justice v. Julian, 486 U.S. 1, 8 (1988); F.B.I. V. Abramson, 456 U.S. 615, 621 (1982).

25. In responding to an FOIA request, the agency has been expressly directed by Congress to delete the exempt portions of the documents requested and provide the remainder, F.B.I. V. Abramson, 456 U.S. 615 (1982). In this case the F.B.I. And the U.S.

Department of Justice refused to produce any records requested by Plaintiff. Nor did the F.B.I or the U.S. Department of Justice delete exempt portions of the records requested and provide the remainder as required by law.

26. In responding to Joseph Poett's **FOIA** request the F.B.I. And the U.S. Department of Justice did not provide a *Vaughn* Index (*Vaughn v. Rosen*, 484 F.2d 820, 826-27 (D.C. 1973) identifying which responsive documents have been withheld pursuant to claims of exemptions.

COUNT ONE

(Failure to Provide Documents Responsive to FOIA Requests)

27. Joseph Poett incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

28. Pursuant to **FOIA**, "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, *shall* make the records promptly available to any person." 5 U.S.C. Section 552(a)(3)(A) (emphasis added).

29. Joseph Poett made **FOIA** requests for records that reasonably described the records he sought and were in accordance with published rules of the Department of Justice. Nonetheless, the U.S. Department of Justice has failed to provide documents in its possession that are responsive to the **FOIA** requests and failed to identify a legitimate statutory exemption that would entitle it to withhold responsive records.

30. By failing to produce records in response to Joseph Poett's **FOIA** request without adequate justification, the U.S. Department of Justice has violated the

requirements of **FOIA**.

COUNT TWO

(Failure to Provide A *Vaughn* Index)

31. Plaintiff incorporates by reference paragraphs 1 through 30 as though fully set forth herein.

32. Pursuant to *Vaughn v. Rosen*, 484 F.2d 820, 823-27 (D.C. Cir. 1973), and its progeny, an agency that seeks to withhold information in response to an **FOIA** request must provide a *Vaughn* index, consisting of a “relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.” *Mead Data Central, Inc. v. United States Department of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977).

33. By failing to provide a *Vaughn* index, the U.S. Department of Justice has violated the requirements of **FOIA**.

DEMAND FOR RELIEF

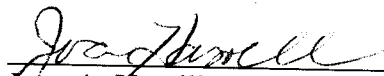
WHEREFORE, Joseph Poett respectfully prays for an order of this Court:

- (a) entering judgment in favor of Joseph Poett;
- (b) declaring that the U.S. Department of Justice has violated **FOIA**;
- (c) ordering the U.S. Department of Justice to prepare a *Vaughn* index of materials it proposes to withhold and share such index with Joseph Poett;
- (d) ordering the U.S. Department of Justice to produce to Joseph Poett all documents that are responsive to Joseph Poett’s **FOIA** request;
- (e) assessing against the U.S. Department of Justice reasonable attorneys fees

and other litigation costs reasonably incurred by Joseph Poett in
prosecuting this case; and

- (f) issuing such further relief as the Court deems just and proper.

Respectfully submitted,



Joan A. Harvill (D.C. Bar No. 309112)

Attorney for the Plaintiff

1629 K. Street N.W.

Suite 300

Washington, D.C. 20006

Tele: (202) 466-6346

Fax: (202) 331-3759

E-mail: Abogadaxyz@aol.com